

Superior Court
of the
State of Delaware

Jan R. Jurden
Judge

New Castle County Courthouse
500 North King Street, Suite 10400
Wilmington, Delaware 19801-3733
Telephone (302) 255-0665

Date Submitted: March 12, 2009

Date Decided: March 23, 2009

L. Vincent Ramunno, Esq.
Ramunno & Ramunno, P.A.
903 N. French Street
Wilmington, DE 19801

RE: Ramunno & Ramunno, P.A. v. Gary S. Nitsche, P.A.
C.A. No. 08C-03-037-JRJ

Dear Mr. Ramunno:

The Court has reviewed your letter dated March 10, 2009. In that letter you state, “Your Honor’s ruling...is so inconsistent and disturbing that upon reflection I feel compelled to respectfully ask Your Honor to disqualify yourself.”¹ The Court will treat your letter request as a motion. Before engaging in the analysis mandated by *Los v. Los*,² the Court notes that you fail to cite any case law in support of your argument that I should disqualify myself as a result of my ruling regarding ADR.

In considering a motion for recusal, the Court must engage in a two-part analysis. First, the judge must be satisfied that she can proceed to hear the cause free of bias or prejudice concerning that party. Second, even if the judge believes she has no bias, she must examine objectively whether the circumstances require recusal because there is an appearance of bias sufficient to cause doubt as to the judge’s impartiality.³

¹ D.I. 40 at 2.

² *Los v. Los*, 595 A.2d 381, 384 (Del. 1991).

³ *Gattis v. State*, 955 A.2d 1276, 1281 (Del. 2008); *Los v. Los*, 595 A.2d 381, 384 (Del. 1991).

With respect to the first prong, the Court is subjectively satisfied it can hear the cause free of bias or prejudice concerning the plaintiff. As to the second prong, after objective examination of all the circumstances, the Court cannot fathom how its ruling on ADR would appear to an objective observer to be biased. Pursuant to Superior Court Civil Rule 16(a), the Court “may in its discretion direct the attorneys for the parties to appear before it for a conference...for such purposes as...[t]o engage in compulsory alternative dispute resolution (“ADR”). If the parties cannot agree on an ADR practitioner, the Court may appoint one.⁴ In this case, the parties could not agree on an ADR practitioner. Consequently, the Court appointed a Superior Court Commissioner. The plaintiff was and is not happy with this order.⁵ In so ordering, the Court acted in accordance with Rule 16 and well within its discretion. Every case is different. Not every case can be resolved before trial. There have been numerous cases in which the Court has not ordered mandatory ADR because one or both parties represented to the Court it would be a waste of time and resources. Here, under the particular circumstances of this hotly contested fee dispute, the Court declined to order the parties to incur what would be substantial expense for a private mediator and ordered mediation by a Commissioner. This ruling is not borne of any bias or prejudice and is appropriate and sound given the history and tenor of this case.

For these reasons, the plaintiff’s Motion for Disqualification is **DENIED**.

IT IS SO ORDERED.

Jurden, J.

cc: Gary S. Nitsche, Esq.

⁴ Superior Court Civil Rule 16(a)(4)(a).

⁵ Under plaintiff’s theory, a judge would have to recuse herself any time she ruled against a party. An adverse ruling does not and cannot constitute an appearance of bias. See *Gattis*, 955 A.2d 1276, 1984 (Del. 2008). (“This Court has noted that ‘the mere fact that a Judge has made some pretrial rulings against a given defendant is not in itself sufficient to require disqualification.’”)